

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

A.P.G., an infant,
by his mother and next friend,
BRITTANY M. JONES

Plaintiff,

v.

FISHER-PRICE, INC.; MATTEL, INC.;
WAL-MART.COM USA, LLC;
WALMART INC.; WAL-MART
ASSOCIATES, INC.; AND WAL-MART
STORES EAST, LP

Defendants.

Case No. **3:22-cv-00112-DJN**

DECLARATION OF COLEMAN M. COWAN

Coleman M. Cowan, duly sworn, deposes and testifies as follows:

1. I am an adult citizen of Wake County, North Carolina, and am competent to provide the following sworn testimony based upon my own personal knowledge of the litigation of this case.
2. I am the lead attorney for the Plaintiff in this civil action. I began practicing law in 1996, after graduating with honors from Wake Forest University School of Law, and completing a one-year federal judicial clerkship in the Middle District of North Carolina with the Hon. N. Carlton Tilley, Jr. I also hold a master's degree from Columbia University Graduate School of Journalism where I was an inaugural member of the Stabile Center for Investigative Journalism. During the course of my career, I have more than ten years' experience as a trial lawyer, and more than ten years' experience as a producer for 60 Minutes in New York. I have been recognized by Business NC Magazine as one of North Carolina's

“Legal Elite” trial lawyers, and have won multiple national broadcasting awards for stories I produced at 60 Minutes. My personal story has been featured nationally on CBS News¹ and locally by the News & Observer². Today, I am the Department Head of the Litigation Practice Section at James Scott Farrin, which consists of 17 attorneys and 27 staff members. I also serve on the Local Civil Rules Committee for the Middle District of North Carolina, serve as the Chair of the Professional Vitality Committee of the North Carolina Bar Association, serve as a law student mentor in Campbell University School of Law’s Mentorship Program, and am an occasional columnist for North Carolina Lawyer Magazine, a publication of the North Carolina Bar Association³. I have substantial jury trial experience as well as experience with complex products liability cases. For the past several years, I have been invited to teach classes at Duke University School of Law on trial and pre-trial advocacy, on occasion teaching with the Hon. Thomas D. Schroeder, Chief Judge of the United States District Court for the Middle District of North Carolina, and the Hon. Robert T. Numbers, Magistrate Judge of the Eastern District of North Carolina. I am often asked to speak to both legal and non-legal groups about my experiences as a lawyer and journalist. Further details concerning my educational and work background are summarized on my curriculum vitae, attached to this affidavit.

3. My law partner, Kaitlyn Fudge, and our staff devoted thousands of hours over the course of more than four years to investigate, file, and litigate this complex products liability lawsuit. The product involved in this case is the Ultra-Lite Day and Night Play Yard.

¹ “Inside the Most Dangerous Assignments,” *CBS News* (Aug. 21, 2017) <https://www.youtube.com/watch?v=Q2zdpYpGWro>.

² “As a Durham lawyer, he got shot. That led to ‘60 Minutes’ and a new career. Now, he’s back,” *News & Observer* (March 13, 2018) <https://www.newsobserver.com/article204280919.html>.

³ “The Tiny Moments,” *North Carolina Lawyer Magazine* (Nov. 11, 2021) <https://www.ncbar.org/nc-lawyer/2021-11/the-tiny-moments/>; “My Blackboard Mind,” *North Carolina Lawyer Magazine* (Aug. 17, 2021) <https://www.ncbar.org/nc-lawyer/2021-08/my-blackboard-mind/>

Although there are several cases pending throughout the country involving a similar product, the Rock 'n Play Sleeper, I am not aware of any other case throughout the country involving the product involved in this lawsuit. Ms. Fudge and I, our staff, and our firm devoted significant time, resources, and expenses to developing and pursuing the liability case from the ground up. This work involved consulting with experts in the fields of infant product design and development, human factors, biomechanical engineering, and regulatory matters concerning the Consumer Products Safety Commission. It also involved reviewing more than 1.2 million pages of documents, videos, and photographs produced in this case to understand the design, review, and manufacturing process for the product involved in this case, as well as information learned by, and decisions made by Defendants after it was brought to market.

4. In addition to the liability case, the nature and extent of the Plaintiff's injuries in this case required a significant amount of time and resources to develop the damages case. This work included collecting and reviewing thousands of pages of medical records as well as consulting with medical experts in the fields of pediatric neurology, physical medicine and rehabilitation, life care planning, and economics/present day value calculation.

5. In addition to the written discovery exchanged by the Parties, and meet-and-confer conferences, and related motions, 23 depositions were taken by the Parties in this case. These depositions consisted of depositions of the parties, including Rule 30(b)(6) depositions of Fisher-Price and Wal-Mart, fact witness depositions, and depositions of experts designated by both Plaintiff and Defendants. Many depositions occurred in Virginia or North Carolina, but others were conducted in New York, Arkansas, Idaho, Michigan, California, and Florida. Ms. Fudge and I were in attendance for each deposition taken in this case, and conducted or

defended all but two of them (the parents' depositions in Durham, NC). Given the complexity of the issues involved in this case, most, if not all, of the depositions required a significant amount of preparation time and work. For example, Ms. Fudge and I spent months preparing to take the Rule 30(b)(6) depositions of Defendants Fisher-Price and Wal-Mart. In addition to the depositions we conducted and defended, Ms. Fudge and I were also present at the product inspection, the independent medical examination of Plaintiff, as well as numerous meetings with the liability and damages experts we developed in this case. We also handled all written discovery, production of documents, and motions filed in this case, including all research, drafting, and submission of Plaintiff's Motion to Compel Production of documents related to the Rock 'n Play Sleeper and Plaintiff's *Daubert* motion and response to Defendants' *Daubert* motion. I handled all of the negotiations for the Plaintiff which led to the resolution of this case, through two judicial settlement conferences and subsequent negotiations mediated by Judge Mark Colombell.

6. Beyond this work, Ms. Fudge and I spent countless hours discussing the case, formulating our litigation strategy, and meeting with and updating A.P.G.'s parents throughout the four years we have worked with them. To say this case has consumed our lives, and our families' lives, for the past four years would be an understatement.

7. It has been nearly 20 years since I billed my time on a regular basis as part of my law practice, but after reviewing my work on this case, I would conservatively estimate I spent no less than 600 hours working on tasks necessary to the advancement of Plaintiff's case.

I verify under penalty of perjury that the foregoing is true and accurate.

This the 7 day of June, 2023.

Coleman Cowan
Coleman M. Cowan
Attorney for Plaintiff

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EXPERIENCE

Law Offices of James Scott Farrin, Durham, NC
Litigation Practice Group Leader, 2022 - Present
Litigation Attorney handling complex personal injury and products liability jury trials, 2018 - Present

CBSN On Assignment, Lead Producer, New York, NY

2017

Produced documentary stories for the premiere of a CBS News primetime news magazine. "Enemy of the State" (Alexei Navalny's anti-corruption campaign against Vladimir Putin); "Guns of Chicago" (An examination of the gun violence in Chicago from the people experiencing it); "The Deadliest Assignment" (Mexican journalists cover cartel violence in the western hemisphere's most dangerous place to be a reporter)

60 Minutes, Producer for Steve Kroft, Scott Pelley, Lesley Stahl, Bob Simon, and Lara Logan, New York, NY

60 Minutes Sports, Producer, New York, NY

2007 – 2017

Awards: News and Documentary Emmy ("Imminent Danger" 2013); Edward R. Murrow ("Stuxnet" 2013, "Amazon Crude" 2010); Gracie ("Kathryn Bigelow" 2011); Sigma Delta Chi ("Amazon Crude" 2010); George Polk ("The Price of Oil" 2010); Business Emmy ("The Chairman" 2009); Peabody ("Lifeline" 2009)

Other Nominations: News and Documentary Emmy ("The Birdmen" 2010); Gerald Loeb ("Amazon Crude" 2010); Business Emmy ("The Price of Oil", "Your Bank Has Failed" 2009)

BusinessWeek Magazine

Investigative Team, 2007 (New York, NY)

Editorial Assistant, 2005 – 2006 (Atlanta, GA)

Wrote stories covering immigration, the airline industry, New Orleans schools post-Katrina, corporate incentives, and the NBA betting scandal.

Jones Martin Parris & Tessener, PLLC, Raleigh, North Carolina

Member, 2000 – 2005

Litigation practice limited to representing the injured in products liability, medical malpractice and personal injury claims. Extensive experience in MDL litigation including pharmaceutical product and medical device litigation. Lead counsel on trials to jury verdict. Admitted to practice in North Carolina. Appeared in cases in North Carolina, Texas, New Jersey, California, Louisiana, Utah, and Kansas.

Womble Carlyle Sandridge & Rice, PLLC, Raleigh, North Carolina

Associate, 1996 – 2000

Litigation practice focusing on defending products liability, personal injury and civil rights claims. Lead counsel on trials to jury verdict and worker's compensation hearings, in addition to practice before the United States Court of Appeals for the Fourth Circuit, North Carolina Supreme Court, North Carolina Court of Appeals

and North Carolina Industrial Commission.

LEGAL HONORS Selected as one of North Carolina's "Legal Elite", Business North Carolina Magazine, January, 2002.

JUDICIAL CLERKSHIP **Hon. N. Carlton Tilley, Jr.**
United States District Court for the Middle District of North Carolina, 1995-96

EDUCATION **Columbia University Graduate School of Journalism**, New York, NY
M.S., *Cum Laude*, 2007
Stabile Center for Investigative Journalism

Wake Forest University School of Law, Winston-Salem, NC
J.D., *Cum Laude*, 1995 (Final Class Rank: 11 of 150)
Wake Forest Law Review, Staff
Most Outstanding Advocate Award, Spring, 1995
Best Oralist Award, First Year Moot Court Competition, Spring, 1993

University of North Carolina, Chapel Hill, NC
B.A., Economics, 1992

INTERESTS Swim, bike, run

CLIPS Broadcast and print clips available at www.colemancowan.com

PUBLISHED LEGAL OPINIONS

1. *Sue C. McNeil v. Wyeth*, 462 F.3d 364 (5th Cir. 2006).
2. *Alex. H. Thompson v. Michael S. Waters et al.*, 351 N.C. 462, 526 S.E.2d 650 (2000).
3. *Anthony Lambert, Sr. v. Brenda G. Williams. et al.*, 223 F.3d 257 (4th Cir. 2000).

LEGAL PRESENTATIONS

1. North Carolina Bar Association Evidence Seminar, Dec. 2001
Course Planner
2. North Carolina Bar Association Evidence Seminar, Dec. 2003
Course Planner
3. North Carolina Academy of Trial Lawyers Annual Product Liability Meeting, May 2004
Speaker, Pharmaceutical Products Liability
4. North Carolina Bar Association Pre-Trial Practice Seminar, July 2004
Speaker, Admission of Expert Witness Testimony under the Federal Rules of Evidence
5. Family Law Specialist CLE, August 2019
Speaker, 60 Minutes with Coleman Cowan
6. NCBA Professional Vitality Committee CLE, Feb. 2022
Keynote Speaker, Hardwired: What our experiences can teach us about managing stress and anxiety